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No. A-195

IN THE

Supreme Court of the United States

OCTOBER TERM, 1982

WALTER KUCHTA and LILLIAN KUCHTA, & UNITED STATES GOVERNMENT, et al.,

Petitioner,

vs.

ALLSTATE INSURANCE COMPANY & FIRM OF McDERMOTT & McGEE & STATE OF NEW JERSEY.

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT.

Brief and Appendix in Opposition to Petition for a Writ of Certiorari on Behalf of Respondents

JOHN J. McDERMOTT,
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McDERMOTT, McGEE and RUPRECHT,
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OPINION BELOW

The decisions of the Third Circuit Court of Appeals denying petitioner's appeal (May 10, 1982) and the petition for rehearing denied (June 7, 1982) are attached hereto as pages 1a-2a and 3a of the Appendix. The petitioner's motion of June 12, 1982, referred to in his petition for certiorari on page 1 under "Opinion Below," is attached hereto as page 4a of the Appendix.

JURISDICTION AND CONSTITUTIONAL PROVISIONS

The respondents, Allstate and McDermott and McGee contend that the petitioner has not set forth adequate grounds for invoking the jurisdiction of the Court.

The petitioner cites, in part, Rule 17(a) of the Rules of the Supreme Court of the United States to support his argument that the Court has jurisdiction. The portion of the rule relied on by the petitioner states the Court will consider granting certiorari if a federal court:

> ***has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by a lower court as to call for an exercise of this Court's power of supervision.

In support of the invocation of this provision the petitioner complains solely that he was denied a hearing in open court on his motion of June 12, 1982 by the U.S. Court of Appeals for the Third Circuit and that the respondents filed no papers in response to the petitioner's application for rehearing below. For the same reasons the petitioner contends that he was deprived of civil rights in violation of the Federal Civil Rights Act, 42

U.S. §1983. The reasons set forth by the petitioner here are clearly insufficient to warrant the granting of his petition for certiorari.

STATEMENT OF THE CASE

The history of this matter dates back to 1958 or 1959. From then until September 1974, it is outlined in Judge Biunno's Memorandum Opinion of September 25, 1974 (Appendix pages 5a-7a), Affidavit of John J. Gaffey (Appendix pages 8a-18a) and Schedules A through L filed in support of the defendant's motion for summary judgment dated August 13, 1973 (Appendix pages 19a-42a) which, for the sake of brevity, are hereby adopted.

This is the third time this petitioner has applied to the United States Supreme Court in this same matter. On October 4, 1976, this Court denied Mr. Kuchta's petition for certification, docket no. 75-6765 (see Appendix page 43a). Thereafter, Mr. Kuchta re-instituted suit in the United States District Court for the District of New Jersey. This suit was dismissed on summary judgment in 1977 (see Appendix page 44a). The petitioner then appealed again to the Third Circuit Court of Appeals which appeal was dismissed in November 1978 (see Appendix pages 45a and 46a). In December, 1978, Mr. Kuchta filed a "Notice of Appeal to the Supreme Court of the United States" which was never docketed (see Appendix page 47a).

The matter lay dormant until February, 1980 when Mr. Kuchta filed suit for the third time pro se in the United States District Court for the District of New Jersey. Mr. Kuchta, this time, gratuitiously named as parties plaintiff, in addition to himself, his deceased wife, Lillian, and the United States Government. He joined as

defendants with Allstate, the Firm of McDermott & McGee and the State of New Jersey. The Complaint filed in that suit is at page 48a of our Appendix.

This most recent suit was dismissed by the United States District Court (Appendix page 51a). Appeal was then filed by the petitioner to the United States Court of Appeals for the Third Circuit. This appeal was dismissed (Appendix page 1a). The petitioner applied to the Court of Appeals for rehearing which was denied (Appendix 3a). The petitioner then filed his "motion" of June 12, 1982 which was defective in form and not accepted by the Court of Appeals (Appendix 4a).

ARGUMENT

The long and tortured history of this matter is set forth in Judge Biunno's Memorandum Opinion of September 25, 1974, the Affidavit of John J. Gaffey in support of the motion of August 13, 1973 for summary judgment and Schedules A through L in support of the same motion, all of which are in the Appendix hereto and in the Statement of the Case, *supra*. Most of those who have appeared in the various episodes of this saga have died or retired. To the best of my memory, in about 1977 or 1978, I was unfortunate enough to have the mantel passed to me upon the retirement of Charles V. Webb, Jr. Mr. Webb had inherited the case upon the retirement of John J. Gaffey.

The suits by Mr. Kuchta were settled during negotiations before Judge Fulop for $19,500.00 (see Gaffey Affidavit, paragraph 9, Appendix page 10a). From the settlement figure, all outstanding liens were to be deducted (letters of Allistair J. Sellar, Fsq. of September 29, 1967 and January 17, 1968, Schedules A & F respectively, Appendix pages 19a and 32a). Mr. Sellars, who represented the petitioner's original attorney, Myron Levy, Esq., in a malpractice suit the petitioner brought against Mr. Levy, was able to obtain the agreement of the Veterans Hospital to withdraw its lien. What remained to be paid from the $19,500.00 were: (a) The Middlesex Rehabilitation Center—$1,336.00; Dr. William Kuhn—$920.00 and Myron Levy, Esq.—$3,000.00. After deducting and paying these amounts, the balance of $14,244.00 was tendered to Mr. Kuchta but he refused to accept it. Mr. Kuchta has continued to refuse payment of this settlement to date.

Since 1968, Mr. Kuchta has begun three separate suits in the United States District Court alleging that somehow he was defrauded. Each of these suits has been

dismissed and on each occasion he appealed to the United States District Court for the Third Circuit. Each of these appeals were unsuccessful and on each occasion, Mr. Kuchta sought to have the matter heard by the United States Supreme Court. In October 1976, the Supreme Court denied the petition for certiorari. In December 1978, Mr. Kuchta filed what he terms a "Notice of Appeal to the Supreme Court" which was never docketed. He now has applied again for certiorari.

Each time Mr. Kuchta has appealed and lost, in the Court of Appeals, costs have been taxed against him. On his first appeal, costs were awarded the respondent, Allstate, in the amount of $2,579.33 (see letter of December 24, 1975 from Clerk of U.S. District Court, Appendix page 50a). These costs of $2,579.33 were deducted from the $14,244.00 owing to the petitioner but which he refused to accept. This left a balance of $11,664.67. On February 22, 1978, I obtained an Order, over petitioner's objection, to pay the $11,664.67 to the Clerk of the New Jersey Superior Court (see Appendix page 53a) which was done (see Appendix page 54a). The petitioner has, since that time, claimed that I committed fraud because he was told the Clerk was holding this money in his name only and not in both his name and his wife's.

Since depositing the money with the Clerk, we obtained from that fund $321.78 for costs taxed by the U.S. Court of Appeals in December 1978 (see Appendix page 55a). Most recently, on June 18, 1982, the U.S. Court of Appeals taxed costs in favor of Allstate and McDermott and McGee and against the petitioner in the amount of $5,418.00 (see Appendix page 1a and 2a). We filed a motion with the New Jersey Superior Court for an Order directing the Clerk of the Court to pay these taxed costs from the fund held by the Clerk for the petitioner, however, we voluntarily withdrew that motion and agreed to withhold such application pending the outcome of this

petition for certification. The sad thing is that the funds of the petitioner are being eaten up by his continuous litigation and appeals and whatever balance may remain after twenty years will escheat to the State of New Jersey. This has been explained to the petitioner but he refuses to recognize it.

Finally, petitioner complains that his wife and daughter never cashed the drafts for $300.00 and $500.00 sent to them in payment of their judgment. It must be pointed out that the petitioner is pro se and cannot represent his wife, daughter or the United States Government. Mrs. Kuchta has passed away and his daughter, Sandra, who was an infant in 1959, is now an adult. Neither Mrs. Kuchta nor Sandra have ever come forward requesting the issuance of new drafts. Allstate issued drafts in these amounts (see petitioner's Appendix page 19a). Draft 09519478 was apparently cancelled and replaced with draft 09424072 in order to remove Mr. Kuchta's name from the draft in accordance with his wife's request (see John Gaffey's Affidavit, paragraph 23, Appendix page 14a and petitioner's Appendix page 18a). If the uncashed drafts are returned to us, or if it can be established through other means that they remain uncashed (I have written Allstate to see if they can determine this), we will see to it that new drafts are re-issued. However, we will not re-issue these to the petitioner, rather, they can be re-issued only to his daughter, Sandra, and the authenticated representative of Mrs. Kuchta's estate.

CONCLUSION

It is urged that the petition for a writ of certiorari be denied.

Respectfully submitted,

McDERMOTT, McGEE &
RUPRECHT
Attorneys for Appellees,
Allstate Insurance Company &
Firm of McDermott & McGee

By /s/ John L. McDermott
JOHN L. McDERMOTT

APPENDIX

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

DOCKET NO. 80-2208

WALTER KUCHTA and LILLIAN KUCHTA and
UNITED STATES GOVERNMENT, et al.

vs.

ALLSTATE INSURANCE COMPANY and firm of
McDERMOTT & McGEE, ESQS., and
STATE OF NEW JERSEY

Walter Kuchta, *Appellant*

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY
(C. A. NO. 80-00405)

BEFORE: ADAMS, VAN DUSEN AND WEIS, CIRCUIT JUDGES

JUDGMENT ORDER

After considering the contentions raised by appellant, it is

ADJUDGED AND ORDERED that the judgment of the district court be and is hereby affirmed.

Costs to be imposed on appellant.[1]

BY THE COURT,

ATTEST:

/s/ Arlin M. Adams
Circuit Judge

/s/ Sally Mrvos Clerk

DATED: May 10, 1982

1. Taxation of costs shall await the filing of bills of costs. The bills of costs shall itemize the per-page cost of the pages of the printed appendix separately from the cost of appellees' brief.

Certified as a true copy and issued in lieu
of a formal mandate on June 15, 1982.

Test: M. ELIZABETH FERGUSON
Chief Deputy Clerk, United States Court of Appeals
for the Third Circuit

Costs taxes in favor of
Appellee as follows:
Brief $5,418.00

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

DOCKET NO. 80-2208

WALTER KUCHTA and LILLIAN KUCHTA and
UNITED STATES GOVERNMENT, et al.

vs.

ALLSTATE INSURANCE COMPANY and firm of
McDERMOTT & McGEE, ESQS., and
STATE OF NEW JERSEY

Walter Kuchta, *Appellant*

SUR PETITION FOR REHEARING EN BANC

PRESENT: SEITZ, CHIEF JUDGE, ALDISERT, ADAMS, GIBBONS, HUNTER, WEIS, GARTH, HIGGINBOTHAM, SLOVITER, BECKER AND VAN DUSEN, CIRCUIT JUDGES.

The petition for rehearing filed by Appellant, in the above entitled case having been submitted to the judges who participated in the decision of this court and to all the other available circuit judges of the circuit in regular active service, and no judge who concurred in the decision having asked for rehearing, and a majority of the circuit judges of the circuit in regular active service not having voted for rehearing by the court in banc, the petition for rehearing is denied.

BY THE COURT,

/s/ Arlin M. Adams
Circuit Judge

DATED: June 7, 1982

UNITED STATES COURT OF APPEALS

FOR THE THIRD CIRCUIT

DOCKET NO. 80-2208

WALTER KUCHTA & LILLIAN KUCHTA
& UNITED STATES GOVERNMENT ET. ALS.

Plaintiffs-Appellants,

vs.

ALLSTATE INSURANCE CO., FIRM OF
MCDERMOTT AND STATE OF NEW JERSEY

Defendant-Appellee.

NOTICE OF MOTION

Please take notice I Walter Kuchta appeal to the Third Circuit Court to look into the petition for rehearing as the proof of the missing court award and jury awards are in the petition for rehearing. The defendants State of New Jersey, Allstate Insurance Co., and lawyer McDermott did not file an answer to the court. By law the plaintiff appellants should have won the appeal for rehearing. They the State of New Jersey, Allstate Insurance Co., and lawyer could not file an answer to the court because the proof and court order shows the proof. All the proof is in the petition for rehearing, and I pray to the court for a motion for a stay bill of cost to look into the petition for rehearing on this motion, and review the petition for rehearing. The court should look into the petition for rehearing before awarding the bill cost to McDermott of $5,418.00 which is to high, and *because of the stolen jury awards and court award.* I pray that the court accept this motion before the court. I appeal to the court to have it in open court.

/s/ Walter Kuchta
Box 101
Linden, New Jersey 07036

June 12, 1982

MEMORANDUM OPINION AND ORDER OF JUDGE VINCENT P. BIUNNO DATED SEPTEMBER 25, 1974

The court has before it a motion for summary judgment filed by defendant Allstate.

The supporting affidavit and exhibits disclose that a lawsuit had been filed by Kuchta and others against James and Antoinette Rice, in June of 1959. In that case, the Kuchtas were represented by Myron L. Levy, Esq.

The case went to trial before a jury, which returned verdicts for the Kuchtas which they felt were too low. Following denial of a motion for new trial, the case was taken to the Appellate Division of the Superior Court of New Jersey, which reversed as to Kuchta and ordered a new trial as to his damages only. Following remand, efforts were made to negotiate a settlement.

In December of 1963, Kuchta filed a pro se complaint in Superior Court against his former attorney, Levy, claiming malpractice in handling the claim against the Rices. In September, 1967, that suit came on for trial before Judge Fulop, who undertook to assist the parties in negotiating a settlement, not only of the case against Levy, but also of the case against the Rices. The settlement was arrived at on a basis whereby Allstate agreed to pay $19,500, including outstanding lien claims, and Levy's attorney agreed to undertake to resolve the lien claims for a total of not more than $9,000, thus leaving Kuchta at least $10,500 net, and more if the efforts to settle lien claims were more successful than then assured.

The efforts were more successful, and a net of $14,244 remained for payment to Kuchta. At first, Kuchta refused or delayed signing the settlement papers. Eventually, on January 17, 1968, he did sign them. Allstate's

attorney then obtained a check and wrote Kuchta to come in to have it handed to him. He did go in, but declined the check because it was made to both him and his wife. A new check was obtained, payable to him alone, and it was sent to him by certified mail, but was refused and returned. This was at the end of February, 1968.

Thereafter, in September, 1968, Kuchta filed a motion to vacate the dismissal in the Levy case, based on not having been paid the settlement money from the Rice case. That motion was dismissed with prejudice on January 17, 1969.

The complaint in this cause was filed in December, 1969. It is a pro se complaint, and sets out no discernable cause of action in view of the foregoing factual background, none of which is denied on the motion. It is made clear by the answer, and by the motion, as well as in the pretrial order, that Allstate has been at all times and is willing now to deliver the settlement check if Kuchta will accept and collect it.

The court has refrained from acting on the motion before this in the belief that Kuchta would come to realize that refusal to accept the check was contrary to his interests, but he has not accepted it, especially since the funds may otherwise escheat to the State of New Jersey.

The motion for summary judgment in favor of defendant and against plaintiff is accordingly granted, but without costs.

As provided in the pretrial order, Kuchta is granted leave, through his attorneys of record in this cause, to file an amended complaint, if desired, within one month

from the date of signing of this order. Entry of the summary judgment is stayed during that time.

So Ordered.

September 25, 1974

/s/ Vincent P. Biunno, U.S.D.J.

Original to Clerk
xc: Jay Mac Neil, Esq.
John J. Gaffey, Esq.

AFFIDAVIT OF JOHN J. GAFFEY
(Annexed to Foregoing Notice of Motion)

STATE OF NEW JERSEY)
) ss
COUNTY OF ESSEX)

JOHN J. GAFFEY, of full age, being duly sworn, according to law, on his oath, deposes and says:

1. I am an Attorney at Law of the state of New Jersey, and the person who has actually handled the within civil action as well as the civil action then pending in the New Jersey Superior Court, Law Division, Somerset County, Docket No. L-14205-58, entitled, Walter L. Kuchta, et al. Plaintiffs vs. James Rice and Antoinette Rice, Defendants.

2. The suit by Kuchtas versus Rice was started in 1958 and was based on an automobile accident involving their respective automobiles which occurred on State Highway Route #22, in Bound Brook, N.J. on the 8th day of September 1958, resulting in physical injuries to Walter Kuchta, his wife, Lillian Kuchta, and his infant daughter, Sandra Kuchta. Myron Levy, Esq. was the attorney for the Kuchtas, and John A Lynch, Esq. of New Brunswick, the attorney for defendants.

3. The aforementioned suit came on for trial in December 1961, before the late Hon. J. Berkeley Lahey, and a jury, at Somerville, N.J. resulting in a verdict of $7,500. for Walter L. Kuchta; $500. for Sandra L. Kuchta, an infant, by her guardian ad litem, Walter L. Kuchta; and $300. for Lillian Kuchta.

4. A motion for a new trial as to damages only was made by plaintiffs, which was denied by Judge Lahey. Plaintiffs appealed to the Appellate Division of the New Jersey Superior Court, but on the appeal, the appellants

appeared pro se. Differences arose between appellants and Mr. Levy. The Appellate Court affirmed the verdicts in favor of Sandra Kuchta and Lillian Kuchta, but the verdict in favor of Walter Kuchta for $7,500. was reversed and a new trial as to damages only was granted him.

5. The law firm of Gaffey, Webb & McDermott was substituted as attorneys for the Rices, in the new trial.

6. From May 7, 1964 (when Judge Gerofsky pretried the new trial of Mr. Kuchta's case, until June 1967) many trial court appearances on trial court motions occurred on which orders were made and entered, from which appeals were taken by Mr. Kuchta, not only to the Appellate Division of the New Jersey Superior Court, but also to the New Jersey Supreme Court and the United States Supreme Court. In all these appeals which were dismissed, Mr. Kuchta appeared pro se.

7. Also during this period Judge Gebhardt (to whom the trial of the case had been referred by Judge Kingfield) held many conferences with Mr. Kuchta, who appeared pro se, and deponent, seeking settlement of the case, to-wit, settlement discussions occurred in June 1965, November 1965, February 1966 and March 1966. At that time Allstate Insurance Company (the Rices' insurance carrier) agreed to pay $19,500. in settlement of Mr. Kuchta's case, based on an exposure, I believe of $20,000 or $25,000, from which would have to be paid all outstanding liens owing by Mr. Kuchta.

8. Earlier in this affidavit I stated that Myron Levy, Esq. was the attorney for the Kuchtas when their civil action against the Rices was tried. Subsequent to that trial, Mr. Levy no longer represented him. Mr. Kuchta sued Myron Levy for alleged mal practice on his part in the handling of his case and Mr. Levy claimed a lien for services rendered by him in that case. Mr. Levy turned

the suit papers over to his insurance carried, who forwarded them to the law firm of Gleeson, Hansen and Pantages, to defend Myron Levy. This law firm did file answering pleadings on behalf of Myron Levy, and the trial of that case came on for trial in September 1967, before Honorable Ervin S. Fulop, at Elizabeth, N.J.

9. During settlement negotiations of the case of Kuchta vs. Levy, the question came up, of settling the case of Kuchta vs. Rice, which was still pending. What occurred pertaining to this subject is better expressed by the contents of a letter from Alastair J. Sellar, Esq. of the Gleeson law firm to dependent, dated Sept. 28, 1967. A copy of this letter is attached, marked Schedule"A", and a transcript of a discussion before Judge Fulop, on Sept. 27, 1967, is also attached, marked Schedule "B".

10. Mr. Seller obtained from the Veterans Administration a complete release of its lien without payment by Mr. Kuchta. This is substantiated by a letter from James G. Lombardo, Chief Attorney for the Veterans Administration, dated Oct. 5, 1967, addressed to the law firm of Mead, Gleeson, Hansen & Pantages, attention of Alastair J. Sellar. Copy attached, marked Schedule "C".

11. On Oct. 24, 1967, I forwarded various settlement papers to Mr. Sellar for execution by Mr. and Mrs. Kuchta. When I did not receive these papers back from Mr. Sellar within a reasonable time, I 'phoned him. He told me Mr. and Mrs. Kuchta had not come into his office to execute the papers, as he had requested them to do. I suggested that I write Mr. Kuchta, which I did, by letter dated Dec. 11, 1967, a copy of which letter is attached, marked Schedule "D".

12. Under date of Dec. 28, 1967, Mr. Sellar wrote me stating that he had not been contacted by Mr. Walter Kuchta regarding the proposed settlement, and he *re-*

turned the said settlement papers. A copy of this letter is attached, marked Schedule "E".

13. Under date of Jan. 17, 1968, Mr. Sellar wrote me a letter advising that on Jan. 17, 1968, Walter L. Kuchta and Lillian Kuchta, his wife, came into his office and executed said settlement papers. A copy of this letter is attached, marked Schedule "F".

14. Mr. and Mrs. Kuchta came to my office on Wednesday, Jan. 24, 1968, for the check representing the payment of the settlement. I told them I had no knowledge that they would come but only that Mr. Sellar had suggested that they 'phone me as to when they could pick up the check. By letter dated Jan. 27, 1968, I wrote to the Allstate Insurance Company for a check for $14,244., payable to Mr. Walter L. Kuchta and Lillian Kuchta, his wife, which represented the balance after paying the outstanding liens totaling $5256., namely, Mr. Levy $3,000.; the Middlesex Rehabilitation Center $1336. and Dr. Kuhn $920. ($19,500 less $5256.-$14,244.). Also, I requested a check for $500. payable to Mrs. Lillian Kuchta, as the person authorized by the Surrogate of Union County to act on behalf of their daughter, Sandra Kuchta, in satisfaction of her judgment against the Rices, and $300. payable to Lillian Kuchta in payment of her judgment against the Rices.

15. Under the date of Feb. 12, 1968, I wrote to Mr. Walter L. Kuchta to call at the office so I could turn over to him the settlement checks; also asking him to have Mrs. Kuchta present.

16. Mr. Kuchta called at my office, but refused to accept the check for $14,244. because of his wife's name appearing thereon. I wrote the Allstate Insurance Company under date of Feb. 24, 1968, returning the check for $14,244. and asked that a new check for $14,244. be

substituted, payable to Walter L. Kuchta. I assumed that Mr. and Mrs. Kuchta were not getting along very well, since I received a letter from Mrs. Kuchta asking that I should not send her check to her husband.

On February 29, 1968, I mailed Allstate Insurance Co.'s check #09 524060 in the amount of $14,244. in an envelope addressed to Walter L. Kuchta at 3206 Trembley Point Road, Linden, N.J. via certified mail, return receipt requested. This envelope containing said check, was returned to me by the Post Office marked "Refused". A copy of the envelope is attached, marked Schedule "G."

18. I could not contact Mr. Kuchta by 'phone as he had an unlisted telephone number, which I did not know. I thought of depositing the check into the Court, but was dissuaded from doing so, because this would require notice to Mr. Kuchta, and I have previously had considerable difficulty in arranging for service of a notice on him in the case of Kuchta v. Rice. He claimed the Sheriff's Office personnel had broken into his home. Also, I felt as time went on, he would be desirous of getting the proceeds of the check. I also kept in touch with Mr. Sellar, from time to time, by phone, to seek if he had been in touch with Mr. Kuchta, or vice versa. The answer was in the negative.

19. In September 1968, Mr. Sellar contacted me advising that Mr. Kuchta had filed and served on him, a notice of motion (copy of which is attached hereto, marked Schedule "H") to vacate the order of dismissal in the case of *Kuchta v. Levy*, based upon his failure to receive the settlement check in the case of *Kuchta v. Rice*. In these proceedings I signed an affidavit for Mr. Sellar containing what I knew of the settlement proceedings, and the part I played in them. In the main it set forth what I have heretofore detailed herein.

20. On October 25, 1968, I wrote two letters to Mr. Walter L. Kuchta, but this time I did not send them certified mail but ordinary mail, and addressed the two letters as follows: one at 3206 Trembley Point Road, Linden, N.J., and the other to Box 101, Linden, N.J. I had received authorization by order of this court to serve Mr. Kuchta by mailing to him at Box 101, Linden, N.J. A copy of this letter is attached hereto, marked Schedule "I". These letters were never returned to me by the Postal Authority, for any reason.

21. The return day of Mr. Kuchta's motion in the case of Kuchta v. Levy, referred to in paragraph No. 19, was Nov. 22, 1968. Mr. Kuchta adjourned this motion several times. The last request by him was to adjourn the motion to Jan. 17, 1969. When he failed to appear on Jan. 17, 1969, to argue the motion before Judge Fulop, the latter dismissed the motion to reopen the case with prejudice and with costs. A copy of the order made by Judge Fulop in this connection is attached hereto, made a part hereof and marked Schedule "J".

22. Since I could not contact Mr. Kuchta by 'phone, in view of his unlisted 'phone number; that I have received no response to my letter of Oct. 25, 1968, addressed to him at two locations, in which I asked him to call at my office to pick up the check for the settlement sum; that he had refused to accept an envelope containing said settlement check which was sent to him via certified mail, as hereinabove indicated, and in view of the allegations contained in his motion to vacate the order dismissing his case in *Kuchta v. Levy*, as referred to in paragraph 21 above, there was nothing I could further do, in my judgment, to assure me that he would receive and accept the settlement check. However, I retained the settlement check hoping that he would, in some way, contact me, since it was a sizeable sum of money and which I concluded that he could use.

23. On or about February 18, 1970, a defendant, Allstate Insurance Company, was served with suit papers in this action and to which it filed an Answer, through deponent, which, among other things stated that it was ready, willing and able to pay Mr. Kuchta $14,244. but was prevented from doing so by Mr. Kuchta's refusal to accept the same. In this civil action, Mr. Kuchta appears as the plaintiff and also his daughter, Sandra Kuchta, appears as a plaintiff, and Mr. Walter Kuchta appears pro se as attorney for himself and his daughter. As indicated further above in this affidavit, his daughter received a judgment which was affirmed on appeal and a check of Allstate Insurance Company, dated Jan. 29, 1968, in the sum of $500. (which was the amount of the judgment recovered by Sandra Kuchta) was sent to Mrs. Lillian Kuchta at 3206 Trembley Point Road, Linden, N.J., as the mother and the person authorized by the Surrogate of Union County to act on behalf of Sandra Kuchta. This was done pursuant to a request contained in a letter to Gaffey & Webb which is not dated but which was received by Gaffey, Webb & McDermott on January 23, 1968, the contents of which letter read as follows:

> "This is a letter asking you not to give the checks concerning Lillian Kuchta and her daughter to the husband and father, Walter Kuchta, as I am filing for a legal separation and I will need the amount that is to come to me. Thank you. Signed Mrs. Walter Kuchta." (Lillian Kuchta)

24. On Sept. 28, 1970, deponent appeared before Judge Shaw in connection with this case. At that time, the following appears from a transcript prepared by Ashley B. Carick, C.S.R. pages 8 and 9:

> "MR. GAFFEY: May I address the court on an equitable situation? There certainly is as indicated in my

answer $14,244.00 due Mr. Kuchta. I don't know whether I am out of order, but if I am you can tell me so. It seems to me that in some way that money ought to be deposited in some interest bearing account to await the outcome of this case so that it just doesn't lie there not bearing interest.

THE COURT: Who has the money?

MR. GAFFEY: Allstate has the money, and it has been ready, able and willing to turn it over to Mr. Kuchta. For his sake I figure he ought to get interest on it.

THE COURT: Do I understand you don't want to accept the money?

MR. KUCHTA: They paid it wrong on my daughter. It supposed to be over $500. that they have owed me.

MR. GAFFEY: You are getting into the merits.

THE COURT: I don't want to get into the merits. I understand that Allstate wants to pay $14,000 and some odd dollars.

MR. KUCHTA: That is the way I read this.

THE COURT: I understand you don't want it?

MR. KUCHTA: I have to get more, your Honor. I have not worked and I have been in and out of the hospital on and off like that. I was in the V.A. Hospital for over a year. I was in another hospital taking nerve treatment from here to the neck to relieve the pain from the front of the head and all, and I had my hand getting numb, and my legs.

THE COURT: Do you have any objection to having Allstate deposit that money in an interest bearing account so you get some interest?

MR. KUCHTA: They should have done that two years ago. They didn't do it. I should be given interest a long time ago on that, and, another thing they made a check out in two names, and my wife wanted her part of the check to deposit, and they told the government that they were going to give me $14,000, but they would give—

THE COURT: I will go back to what I was talking about before, that you would be better advised to get counsel.

MR. KUCHTA: I will try, your Honor.

THE COURT: I don't believe you will have any trouble getting counsel. I hope you won't, but get counsel. Take up these matters with him. I can't make any decision on the merits.

MR. GAFFEY: I just want to make it known, if I didn't, that this was without prejudice, a deposition with the Court Clerk.

THE COURT: You have made the tender, and bring that to my attention when and if there is a final judgment in favor of the plaintiff, and bear this in mind, Mr. Kuchta, "that you don't get interest on a matter of costs (sic) it should be (as a matter of course), and in most cases it is entirely discretionary with the court. Now, you have had the tender of a deposit which would have given you the benefit of fourteen thousand and some-odd dollars. If you don't want it, the defendant has no obligation to deposit it."

25. The case came up on the calendar call of cases for trial on Oct. 30, 1972, before Hon. Leonard I. Garth. At that time plaintiff appeared pro se (notwithstanding Judge Shaw had urged him on Sept. 28, 1970, to get counsel) and requested Judge Garth to grant him an adjournment to get counsel. My recollection is that Judge

Garth raised a question why he was requesting an adjournment at the time when he had almost two years to get counsel and had not done so. My recollection is that Mr. Kuchta replied to the court that he was not able to do so. Deponent told the court that this was a case wherein plaintiff's interests would be best served by his obtaining counsel and joined in plaintiff's application to Judge Garth for an adjournment, and requesting a conference with Judge Garth on this subject after Judge Garth had completed the calendar call.

26. Judge Garth saw Mr. Kuchta and deponent in his chambers on Oct. 30, 1972 and what transpired there is indicated by the transcript taken of the discussion, by Stanley B. Rizman, C.S.R. dated Oct. 30, 1972.

Suffice it to highlight these points:

(a) A request to deponent to call the Essex County Bar Foundation to seek its aid in referring Mr. Kuchta to an attorney.

(b) A request by deponent to have the sum of $14,244. placed in an interest bearing bank account in Mr. Kuchta's name without prejudice, and

(c) Mr. Kuchta's refusal that this be done.

27. After leaving Judge Garth's chambers, deponent 'phoned the Essex County Bar Foundation in Newark and spoke with a Miss McCarthy. At the time this 'phone call was made and my talk with Miss McCarthy, Mr. Kuchta was at my side. I told Miss McCarthy that Mr. Kuchta needed an attorney to represent him this case; that we had just left Judge Garth's chambers and, at his suggestion, I was calling her to see if she could assist him (Mr. Kuchta) in obtaining an attorney. She agreed to see Mr. Kuchta and set the date as Oct. 31st at the Essex County Bar Foundation, 92 Washington St., Newark, N.J. I wrote this address on a piece of paper and gave it to Mr. Kuchta and asked him to see Miss McCarthy the

next day. He told me he would keep the appointment. I wrote Judge Garth on what I had done.

28. On Dec. 4, 1972, I received a message from my secretary that Mr. Jay Scott MacNeil of the law firm of Nolan & Lynes had 'phoned me. I returned the call and spoke to Mr. MacNeil. He told me that his firm was representing Mr. Kuchta and requested certain information pertaining to the case. Attached hereto is a copy of a letter (marked Schedule "K") I wrote to Mr. MacNeil, dated Dec. 6, 1972, which you will note Mr. MacNeil received on Dec. 7, 1972 the documents referred to in that letter, among which was the check of Allstate Insurance Company #09-524060 dated 2/28/68 in the sum of $14,244.

29. Mr. MacNeil also wrote me asking if the drafts that were issued by Allstate to Mrs. Kuchta and her daughter Sandra had been cashed. He realized from the copy of a letter I had sent to him that as of March 5, 1970, they had not been cashed. I told Mr. MacNeil by 'phone on Dec. 8, 1972, that this could be determined later as to Mrs. Kuchta and her daughter Sandra but I would like to hold up getting this information until the latest date after his talk with Mr. Kuchta. Of course, if Mrs. Kuchta has not cashed the drafts, Allstate is ready, able and willing, and I can so represent to the court, to issue a new drafts in their place.

30. Under date of May 4, 1973, I received a copy of a letter, dated May 2, 1973, to Mr. Kuchta by Jay Scott MacNeil on behalf of Nolan & Lynes. A copy of this letter is attached hereto, made part hereof, marked Schedule "L".

/s/ John J. Gaffey
JOHN J. GAFFEY

NOTARIZED

SCHEDULE A
(Annexed to Foregoing Notice of Motion)

September 29, 1967

John Gaffey, Esq.
Gaffey Webb McDermott
40 Glenwood Avenue
East Orange, New Jersey

Re: Kutcha v. Myron Levy 7 L 496721

Dear John:

Confirming our conversation with your secretary, we settled the case of Kutcha v. Rice when we appeared before Judge Fulop for the trial of Kutcha v. Levy. We would appreciate it if you would provide us with the original and sufficient copies of all documents which you will need to close the case of Kutcha v. Rice, and we will see that they are executed by Mr. & Mrs. Kutcha and returned to you.

As you may know, following the additional trial of the case of Kutcha v. Rice, Kutcha sued various people for malpractice, conspiracy, double dealing, and assorted breaches of trust. We were designed to represent Myron Levy, Esq., the attorney that represented Kutcha, against the charges of negligence and malpractice. Most of the other defendants, including Senator John Lynch, your predecessor as attorney for the Rice's got out on summary judgment.

We tried the case of Kuchta v. Levy for two days before we were able to dispose of the matter. Senator Lynch was subpoened as a witness by the plaintiff, who appeared pro se. After his examination was finished, we had an opportunity to discuss the case with him, and he spoke with the Allstate adjuster in the Union County

Court House. We were advised that a $19,500.00 offer on the Kuchta case was still open. This was communicated to Judge Fulop who we understand spoke with you and Judge Gebhardt. A copy of the settlement agreement is enclosed for your file.

Our responsibility in the matter is to compromise the bills and liens so that a maximum will reach Kuchta eventually. We are proceeding to do this, and will eventually pay the necessary bills from your settlement check which we will pay through our trustee account.

When you send the closing documents to us, please advise us if there are any liens so that we may negotiate on these too.

Very truly yours,

MEAD, GLEESON, HANSEN
& PANTAGES

By: /s/ Alastair J. Sellar
ALASTAIR J. SELLAR

AJS:clc
cc: New Amsterdam
7 L 496721

SCHEDULE B
(Annexed to Foregoing Notice of Motion)

(1) THE COURT: We have been discussing, with Mr. Kuchta and Mr. Sellar and Mrs. Kuchta, the matter of settling his original claim against the Rices'.

It is my understanding that the Rices' insured is now and still willing to pay nineteen thousand five hundred dollars to Mr. Kuchta in settlement of the claim on which he obtained a judgment for seventy-five hundred dollars, which was set aside by the Appellate Division, and a new trial granted as to damages only. Am I right so far, Walter?

MR. KUCHTA: Yes.

THE COURT: The present posture of the matter is that Mr. Kuchta has obligations which include $10,000 or nearly that sum to the Veterans Administration for hospitalization; Mr. Levys fee, which he has now agreed to reduce to $3,000; The Middlesex Rehabilitation Center, approximately $1,350; St. Peters Hospital, $100; Dr. Kuhn, approximately $920; Dr. Goebble, $230; Dr. Henderson, approximately $100; Dr. Culberson, is that right?

MR. KUCHTA: I think Dr. Henderson is all paid, except maybe $25. Culberson I don't know. I might have paid it. I have to check that.

THE COURT: Possibly $50. Dr. Zangara, possibly $55.

(2) MR. KUCHTA: I think some of the smaller ones is paid. I paid that when I had extra money.

THE COURT: That would reduce these figures.

MR. KUCHTA: They would know whether it's paid or not.

THE COURT: All right.

Mr. Sellar, who represents Mr. Levy's insured and appears for Mr. Levy in this suit for negligent handling of the case, has undertaken to assist Mr. and Mrs. Kuchta in reducing these claims against him and closing them, the settlement with All-State Insurance Company, who cover the Rices'. Mr. and Mrs. Kuchta have agreed that they will settle $19,500, provided that these claims against can be reduced.

How do you want to say it, Mr. Sellar?

MR. SELLAR: To a sum of $10,500.

THE COURT: No.

MR. SELLAR: To a net.

THE COURT: To a net of $9000, leaving no less than $10,500 for Mr. Kuchta. He will attempt to reduce these claims further to the end that the net may be larger, hoping to net at least $12,000 for Mr. Kuchta. Now, what else do you want to say?

MR. SELLAR: Off the record.

(Discussion held off the record.)

(3) THE COURT: Mr. Kuchta, Mr. Sellar has just said that he wants full authority from you, all the papers signed and put in his hands so that he can close your case against the Rices' and handle all of these transactions without needing your signature every time he moves. Are you willing to give him that?

MR. KUCHTA: Yes. He's an honest man. I guess I would.

THE COURT: He is an honest man. I'm sure of that.

Are you satisfied that should be done?

MRS. KUCHTA: Yes.

THE COURT: You are willing to sign those papers as soon as he gets them ready?

MR. KUCHTA: Whenever he has them ready.

THE COURT: That will include what papers, Mr. Sellar?

MR. SELLAR: It will include—

MR. KUCHTA: Your Honor, Mrs.—may I ask something? If he cuts the V.A. bill out, if there is more than $12,000, would I get it?

THE COURT: You would get everything, am I right, Mr. Sellar?

MR. SELLAR: Absolutely.

MR. KUCHTA: For the record—

(4) THE COURT: Yes, everything that there is out of that sum and any further cuts in any of these obligations would enure to your benefit.

MR. SELLAR: I'm not charging you anything for any services that I might render.

THE COURT: As I say, that is remarkable. I just simply think you are wonderful. My own view is that if he did cut it down more, you ought to pay him, but that is something else.

MR. SELLAR: We need various closing documents with reference to the suits that are pending. In other words, in the case of Kuchta v. Rice, I'm going to need a stipulation of dismissal with prejudice running to Mr. and Mrs. Rice.

THE COURT: Running from—what do you mean?

MR. SELLAR: Stipulation of dismissal with prejudice.

THE COURT: Mr. and Mrs. Rice, did you say?

MR. SELLAR: Stipulation of dismissal with prejudice with reference to that suit.

THE COURT: Yes.

MR. SELLAR: I want a release from Mr. and Mrs. Kuchta running to Mr. and Mrs. Rice.

THE COURT: That is right.

MR. KUCHTA: I have to sign a release when (5) you go for the money.

THE COURT: Mrs. Kuchta also has a judgment for what, $200?

MRS. KUCHTA: I don't know the amount.

THE COURT: Whatever the amount is, that will be settled and you will sign papers and you will get the money.

MR. SELLAR: A satisfaction of judgment on that.

THE COURT: Then Sandra has about $500 and she will get that and you will take that as her guardian, not exactly guardian, but by affidavit.

MR. SELLAR: Yes.

THE COURT: I say you, I mean Mrs. Kuchta.

MR. SELLAR: It will also be necessary that we have a release running to Mr. Levy.

THE COURT: Yes.

MR. SELLAR: Since Mr. Levy's fees are being paid, a release from Mr. Levy back to Mr. and Mrs. Kuchta for that particular matter.

THE COURT: Are you satisfied with that, give him a release?

MR. KUCHTA: Yes, you got to get it over with.

THE COURT: You have got to do it. (6) That is the only way.

MR. KUCHTA: Yes, all right.

MR. SELLAR: In connection with both the suit of Kuchta v. Rice and Kuchta v. Levy, I'm gong to file a stipulation of dismissal with prejudice signed by Mr. Kuchta who appears pro se.

MR. KUCHTA: How come all these prejudices? Am I prejudiced about it?

THE COURT: Prejudice means that you cannot bring the case again and you have to discharge—

MR. KUCHTA: I didn't know what it meant.

THE COURT: You have to discharge whatever claim you assert on Sandra's behalf as well as your own. Is that agreeable to you?

MR. KUCHTA: On Rices' case?

THE COURT: I'm going to change the dismissal I ordered, Sandras claim from without prejudice to with prejudice, which means it is closed forever. Is that satisfactory to you as part of this transaction?

MR. KUCHTA: I want to always leave Sandras open, if I can.

THE COURT: I don't think it would be senseable and I don't think it can be done. Now, it is up to you. You can stand out for it, if you (7) like, but I don't think you will make this deal if you do.

MR. SELLAR: I don't believe we want to leave anything open and outstanding.

THE COURT: You have an insurance company to represent. They don't want the claim to stay open.

MR. SELLAR: They don't want the claim standing open and I would be derelict in my duties if I permitted it to stand open.

THE COURT: Yes. That is it, Mr. Kuchta. Don't forget the one thing that Mr. Sellar gets out of this, that he is representing an insurance company and he is getting their case closed and that he has got to have—

MR. KUCHTA: What do you think?

MRS. KUCHTA: Yes.

THE COURT: All right, that is agreed then, what else?

MR. SELLAR: I have nothing else that I can think of.

THE COURT: Anything else you can think of?

MR. KUCHTA: Like I stated before, if the V.A. is cut, I don't know if they could (8) do it, cut down so much, that it would be returned to me because I have a lot of expenses.

THE COURT: I think so.

MR. SELLAR: I can assure you that it will be. Don't worry about that.

THE COURT: You have the answer.

MR. KUCHTA: If they want the whole thing then I'm going to be giving out in the end too.

THE COURT: Mr. Sellar says that whatever additional he may be able to save the V.A. is yours.

MR. KUCHTA: Yes, like if they want the $9,500 I still have to give it to them, either way you look at it.

MR. SELLAR: Since both you and I are sort of in the middle of this, I would hope that in the event I run into difficulties, I would have the opportunity of coming down and discussing the problems with you.

THE COURT: I would be very happy to do anything I can because this is a tragic situation and if we can clear it up, I will be happy to help. I'm very grateful to you for what you are doing.

(9) I, HOWARD A. RAPPAPORT, a Certified Shorthand Reporter and Notary Public of the State of New Jersey, do hereby CERTIFY that the within transcript is a true and accurate transcription of the proceedings as held in the chambers of HONORABLE ERVIN S. FULOP, J.S.C. at the time and place hereinbefore set forth.

/s/ Howard A. Rappaport
HOWARD A. RAPPAPORT
CSR
Official Court Reporter

SCHEDULE C
(Annexed to Foregoing Notice of Motion)

October 5, 1967

Mead, Gleeson, Hansen & Pantages, Esqs.
1180 Raymond Boulevard
Newark, New Jersey 07102

Attention. Alastair J. Sellar, Esq.

Re: Walter J. Kuchta—47407-AJS

Gentlemen:

We have communicated with our General Counsel in Washington, D.C., concerning the matter set forth in your letter of September 29, 1967 and our previous conversation relative to the adjustment of bills of the VA Hospital, East Orange, New Jersey, covering treatment of the veteran from and after June 30, 1960. An adjustment thereof is sought in order that a settlement could be finally concluded for $19,500.00, against the tort feasors under the prevailing facts and circumstances.

It was determined that complete and absolute waiver and release by the Veterans Administration of any and all claims for medical and hospital care and treatment furnished or to be furnished Walter L. Kuchta would best serve the interests of justice and restore the orderly process, dignity and public relations to our New Jersey Court System. It is anticipated that this decision, by making more funds available to the veteran, may bring about a complete and final settlement of the myriad suits and appeals brought by him and that it may be conducive toward his rehabilitation and the direction of his further efforts toward making a new life for himself through resumption of employment and the support of himself and his family. This letter may be treated as

evidence of the complete waiver and release of all claims of the Veterans Administration as set forth herein.

Please advise this office when the settlement funds are disbursed and the manner of disbursement in order that we may close out our hospital collection file.

A copy of this letter is being furnished for the information of the Honorable Ervin S. Fulop, whose untiring efforts together with other members of the judiciary in effecting this settlement have been noted and considered in our determination.

Sincerely yours,

/s/ James G. Lombardo
JAMES G. LOMBARDO
Chief Attorney

cc: Honorable Ervin S. Fulop

SCHEDULE D
(Annexed to Foregoing Notice of Motion)

December 11, 1967

Mr. Walter Kuchta
3206 Trembley Point Road
Linden, New Jersey

Dear Mr. Kuchta:

Closing settlement papers were sent to Mr. Alastair J. Sellar under date of Oct. 24 1967. I am aware that Mr. Seller does not represent you as an attorney. In fact, he was your adversary in connection with your case against Mr. Myron Levy. However, because of settlement discussions had between Judge Fulop, Mr. Seller and yourself, as well as Mr. Ennis of Allstate, it was my understanding that you had agreed upon a settlement with Allstate Insurance Company with respect to the case of Walter L. Kuchta, et al. plaintiff, vs. James Rice and Antoinette Rice pending in the Superior Court of New Jersey, Docket No. L-14202-58. Since the settlement papers were sent to Mr. Seller with my letter of October 24, 1967, and, further, that he advises me that he has sent them on to you, I am at a loss to understand why they have not been executed and returned to him so as to reach me.

If I am in error that your case against Allstate was not settled, please advise me immediately: I am sending a copy of this letter to Allstate for the purpose of obtaining their instructions.

Very truly yours,

GAFFEY, WEBB &
McDERMOTT
By: /s/ John J. Gaffey
JOHN J. GAFFEY

SCHEDULE E
(Annexed to Foregoing Notice of Motion)

December 28, 1967

Gaffey, Webb & McDermott, Esqs.
44 Glenwood Avenue
East Orange, New Jersey

Attention: John J. Gaffey

Re: Kuchta, et al v. Rice
Superior Court of New Jersey
Law Division—Somerset County
Docket No. L-14202-58

Gentlemen:

We have been unable to have Walter Kuchta communicate with us regarding the proposed settlement of the above case and, as a result, we are returning to you herewith the documents which you prepared for execution, and which accompanied your letter of October 24, 1967.

Very truly yours,

MEAD, GLEESON, HANSEN
& PANTAGES

By: /s/ Alastair J. Sellar
ALASTAIR J. SELLAR

AJS:clc

cc: Honorable Ervin S. Fulop
cc: Honorable Philip R. Gebhardt
cc: Mr. Kuchta
cc: James Lombardo, Esq., Chief Attorney
Veterans Administration (Your File 309(27)
C 1338 16 30

SCHEDULE F
(Annexed to Foregoing Notice of Motion)

January 17, 1968

John J. Gaffey, Esq.
Messrs. Gaffey, Webb & McDermott
44 Glenwood Avenue
East Orange, New Jersey

Re: Kuchta, et al v. Rice

Dear Mr. Gaffey:

We wish to advise that on January 17, 1968, Walter L. Kuchta and Lillian Kuchta, his wife, came to this office for the purpose of executing closing documents in accordance with their settlement agreement.

It is understood that the sum of $19,500.00 less the liens listed below will be paid to Walter L. Kuchta and Lillian Kuchta, his wife; $300.00 paid to Lillian Kuchta individually; and $500.00 payable to Lillian Kuchta as the person authorized by the Union County Surrogate's Office to receive certain monies. From the sum of $19,500.00 payable to Walter Kuchta you will pay out an amount of $1,336.00 to the Middlesex Rehabilitation Center; $920.00 to Dr. William Kuhn; and $3,000.00 to Myron Levy, Esq., resulting in a net payment to Mr. Kuchta of $14,244.00

You will hold the following documents in escrow until such times as the sums of money as itemized above have been paid:

(a) General Release from Walter L. Kuchta and wife to James Rice and wife reciting a consideration of $19,500.00;

(b) General Release from Walter L. Kuchta, individually and as guardian for Sandra and Lillian Kuchta to Myron L. Levy reciting a consideration of $3,000.00;

(c) Original and copy of Warrant for Satisfaction of Judgment;

(d) Short form certificate evidencing the appointment of Lillian Kuchta as the person authorized to receive judgment monies;

(e) Consent order in connection with the case of *Kuchta v. Rice*

Myron Levy is obligated to provide a General Release running from him to Mr. & Mrs. Kuchta. We have phoned him to advise that the original should be sent to you and two copies of said release should be sent to this office. We will forward one of these to Mr. Kuchta.

We have requested Mr. Kuchta to phone you on January 24, 1968 between 4:00 and 5:00 so that he may make arrangements with you to pick up the check to his order and to the order of his wife, individually and as the person authorized to receive the judgment monies.

Very truly yours,

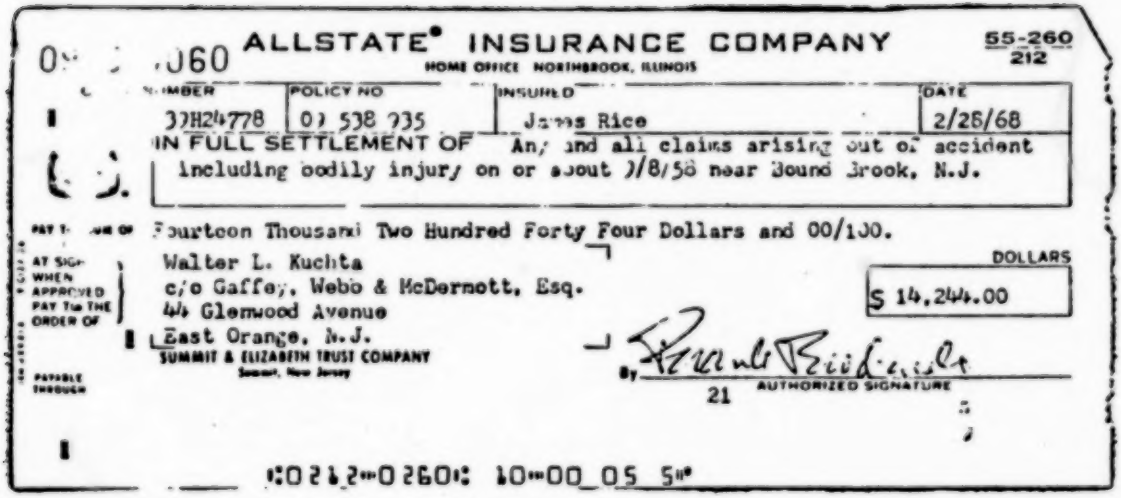
MEAD, GLEESON, HANSEN
& PANTAGES

By: /s/ Alastair J. Sellar
ALASTAIR J. SELLAR

AJS:clc
cc: Walter L. Kuchta

SCHEDULE G

(Annexed to Foregoing Notice of Motion)



0[illegible]060 ALLSTATE® INSURANCE COMPANY 55-260 212

HOME OFFICE NORTHBROOK, ILLINOIS

[illegible]UMBER	POLICY NO	INSURED	DATE
33H24778	03 538 935	James Rice	2/26/68

IN FULL SETTLEMENT OF Any and all claims arising out of accident including bodily injury on or about 1/8/58 near Bound Brook, N.J.

PAY T[illegible] OF Fourteen Thousand Two Hundred Forty Four Dollars and 00/100. DOLLARS

AT SIGHT WHEN APPROVED PAY THE ORDER OF

Walter L. Kuchta
c/o Gaffey, Webb & McDermott, Esq.
44 Glenwood Avenue
East Orange, N.J.

$ 14,244.00

SUMMIT & ELIZABETH TRUST COMPANY
Summit, New Jersey

PAYABLE THROUGH

By [signature] AUTHORIZED SIGNATURE

21

:0212=02600: 10=00 05 5=

WEBB & McDERMOTT
44 GLENWOOD AVENUE
ORANGE, NEW JERSEY 07017

Mr. Walter L. Kuchta
3206 Trembley Point Road
Linden, New Jersey

Return receipt

Cert. mail
r.r.r

SCHEDULE H
(Annexed to Foregoing Notice of Motion)

TO: ALSTAIR J. SELLAR, Attorney for Myron Levy
1108 Raymond Blvd.
Newark, New Jersey

SIR:

PLEASE TAKE NOTICE that on November 22, 1968 at 9:30 o'clock in the forenoon, or as soon thereafter as counsel may be heard, the undersigned, attorney for the plaintiffs, Walter Kuchta and infant Sandra Kuchta, shall apply to such judge as may be sitting to hear motions in the above matter in the above Court House, Elizabeth, New Jersey, for an Order to vacate Order of 26 day September 1967 and sent to Kuchta December 21, 1967 so he could not appeal because of fraud, etc. to Kuchta and infant Sandra Kuchta under Rule 4:62-2 mistakes; inadvertence; excusable neglect, newly discovered evidence; fraud, etc.

1. The trial has been settled because he was guaranteed and assured $12,000 and over to be given to Walter Kuchta which Walter Kuchta has went many times to get the money but could not get the money.

2. Telling the government to drop their bill because Walter Kuchta was assured $14,000 but are trying to break the Kuchta life, and by trying steal this money. This is fraud.

3. Not paying infant Kuchta her money but trying to steal this amount too and this is fraud.

4. Stating to the judge he would assure Walter Kuchta would get the amount as stated above and Sandra Kuchta by the courts both are being cheated and is going to sue besides asking to have this order vacated.

5. I shall protest my signing of any papers because of fraud.

6. Illegal filing of papers and not sending the other party.

7. I shall notify the government of this fraud:

8. Stating to the courts this money was paid and stating to the government the same.

For these reasons and more the order should be vacated.

I shall protest and sue the ones involved for this fraud.

Because of going many times for this money and was assured I could pick this money at the office in four days but was refused and breaking of my home life because of these Allstate Insurance lawyers who told the judge they woud take care of everything but they forgot to tell the judge they were going to give me Kuchta's the business. For this fraud I will file papers before bar and file re papers to sue.

September 25, 1968.

/s/ Walter Kuchta
WALTER KUCHTA

/s/ Sandra Kuchta
SANDRA KUCHTA

SCHEDULE I
(Annexed to Foregoing Notice of Motion)

October 25, 1968

Mr. Walter L. Kuchta
Box 101
Linden, New Jersey

Mr. Walter Kuchta
3206 Trembley Point Road
Linden, New Jersey

Dear Mr. Kuchta:

Please make arrangements to contact my office to make an appointment to stop in to pick up your check #09524060 in the amount of $14,244.00 which is payable to Walter L. Kuchta.

Ths check was previously sent to you under letter dated February 29, 1968 which was sent Certified Mail (150733). This letter was returned which the notation "REFUSED."

Very truly yours,

GAFFEY, WEBB &
McDERMOTT

By: /s/ John J. Gaffey
JOHN J. GAFFEY

JJG:Ja

SCHEDULE J
(Annexed to Foregoing Notice of Motion)

This matter being opened to the Court by Alastair J. Sellar representing Mead, Gleeson, Hansen & Pantages, attorneys for the defendant Myron Levy, Esq.; and it appearing that the plaintiff, acting pro se, failed to appear on January 17, 1969, for the purpose of presenting a motion for a new trial; and it further appearing that, if heard, the application would be without merit;

IT IS on this 21st day of January, 1969, ORDERED that the application of the plaintiff to reopen the case, and to get a new trial, is denied with prejudice and with costs.

/s/ Ervin S. Fulop
ERVIN S. FULOP
J.S.C.

SCHEDULE K
(Annexed to Foregoing Notice of Motion)

December 6, 1972

Re: Kuchta v. Allstate Insurance Co.
(Our File 11609—Civil No. 1468-69)

J. Scott MacNeill, Esq.,
c/o Nolan & Lyons, Esqs.,
60 Park Place,
Newark, N.J. 07102

Dear Mr. MacNeill:

As requested by you in our phone conversation of Tuesday, I am enclosing Allstate Insurance Company check No. 09-524060, dated 2/28/68 in the sum of $14,244. Also a photostatic copy of a letter purporting to be signed by Mrs. Walter Kuchta.

For your information, although not requested by you, I am enclosing a photostatic copy of the following:

A letter dated February 29, 1968, to Mrs. Lillian Kuchta enclosing check No. 09 524072 in the sum of $300. from Allstate Insurance Company.

A letter dated February 24, 1968 to Mrs. Lillian Kuchta enclosing check of Allstate Insurance Company dated Jan. 29, 1968 in the sum of $500.

A letter dated Feb. 29, 1968 to Walter Kuchta enclsong the aforementioned check for $14,244. (This certified mail was refused by Mr. Kuchta and the envelope returned to us.)

A letter date March 17, 1970 from Allstate to me together with a letter from Allstate's District Claims

Manager (Haus) re subject of whether checks had been cashed.

Would you please acknowledge receipt on the copy of this letter and return to me in the enclosed stamped envelope.

Very truly yours,

GAFFEY, WEBB &
McDERMOTT

By: /s/ John H. Gaffey
JOHN J. GAFFEY

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Receipt is acknowledged of the within mentioned documents this 7th day of Dec. 1972.

/s/ Jay Scott MacNeill
JAY SCOTT MacNEILL

SCHEDULE L
(Annexed to Foregoing Notice of Motion)

May 2, 1973

Mr. Walter Kuchta,
P.O. Box 101, Linden, New Jersey

Re: Kuchta v. Allstate Insurance Co.

Dear Mr. Kuchta:

Subsequent to our last meeting, it was my understanding that you were to advise us as to your feeling in regard to the acceptance of the check from All State Insurance Company in the amount of $14,244.00. In addition, you were to advise us as to what course of action you wished to pursue in relations to the above. To date we have heard nothing from you and we still have in our file the check referred to above. As we indicated at the time of our last conference it is our feeling that the prolongation of this legal action by you and your continued refusal to accept the payment from All State prejudices only your well being and peace of mind.

As you know, we have reviewed the papers that have been filed by you including all the documentation you provided us in support of those papers. After all of this, we are still of the opinion that your best course of action is to accept settlement tendered by All State since it represents all of the remaining available proceeds under the policy insuring Mr. Rice.

Woud you please advise our office as to your intention concerning this since it has been some period of time since we have heard from you.

Very truly yours,

NOLAN and LYNES
A professional corporation

By: /s/ Jay Scott MacNeill
JAY SCOTT MACNEILL

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, D.C. 20543

October 4, 1976

Charles V. Webb, Jr., Esq.
McDermott & McGee
64 Main Street
Milburn, N.J.

Re: Walter Kuchta and infant Sandra Kuchta
v. Allstate Insurance Company
No. 75-6765

Dear Sir:

The Court today denied the petition for a writ of certiorari in the above-entitled case.

Very truly yours,

MICHAEL RODAK, Jr., Clerk

By Helen Taylor
Assistant Clerk

ORDER
(Original Filed: August 9, 1977)

This matter coming on for hearing before the Court on July 12, 1977 by Notice of Motion of McDermott & McGee for an Order seeking Summary Judgment on behalf of defendant, Allstate Insurance Company; and it appearing to the Court that said Motion should be granted and good cause shown,

It is on this 8th day of August, 1977,

ORDERED that defendant, Allstate Insurance Company's motion for Summary Judgment is granted, and it is further

ORDERED that the judgment for Summary Judgment is not to be entered until September 12, 1977 on or before which time plaintiff may secure an attorney who will petition for a rehearing and it is further

ORDERED that the part of Allstate's motion seeking to enjoin plaintiff from filing further suits based on this matter is denied.

/s/ Vincent P. Biunno
VINCENT P. BIUNNO, (U.S.D.C.)

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 78-1392

KUCHTA, Walter and United States Government, et als

vs.

ALLSTATE INSURANCE COMPANY, et al

WALTER KUCHTA, *Appellant*

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY
(D.C. CIVIL NO. 76-2462)

SUBMITTED UNDER THIRD CIRCUIT RULE 12(6)
NOVEMBER 14, 1978
BEFORE: ALDISERT AND HUNTER, CIRCUIT JUDGES, AND
STEEL, *District Judge.**

JUDGMENT ORDER

It appearing that the district court docket entries disclose that final judgment was entered on the civil docket on September 13, 1977, that the notice of appeal was not filed until February 23, 1978, and that the district court did not extend the time for filing the notice of appeal;

And after considering that Rule 4(a), F.R.App.P., explicitly provides that in a civil case where the United States or an officer or agency thereof is not a party, the

* Honorable Edwin D. Steel, Jr., of the United States District Court for the District of Delaware, sitting by designation.

notice of appeal shall be filed within 30 days of the date of the entry of the judgment or order appealed from;

And recognizing the teachings of *Fallen v. United States*, 378 U.S. 139, 142 (1964), that "the timely filing of a notice of appeal is a jurisdictional prerequisite to the hearing of the appeal," and the decisional law of this court that "[t]he thirty day period for taking an appeal is mandatory and jurisdictional. *Fitzsimmons v. Yeager*, 391 F.2d 849 (3d Cir. 1968), *cert. denied*, 393 U.S. 868, 89 S.Ct. 154, 21 L.Ed.2d 137 (1968)." *Torockio v. Chamberlain Mfg. Co.*, 456 F.2d 1084, 1085 (3d Cir. 1972); it is

ADJUDGED AND ORDERED that the appeal be and is hereby dismissed.

Costs taxed against appellant.

BY THE COURT,

/s/ Aldisert
Circuit Judge

Attest:

/s/ Thomas F. Quinn
THOMAS F. QUINN, Clerk

DATED: November 14, 1978

Certified as a true copy and issued in lieu
of a formal mandate on December 6, 1978.

Test:

Clerk, United States Court of Appeals
for the Third Circuit

Pursuant to Rule 39(d), F.R.A.P., costs taxed in favor of appellee, Allstate Insurance Company, added hereto on December 19, 1978, as follows:

Brief & Appendix $321.76

NOTICE OF APPEAL

Please take notice, I Walter Kuchta the undersigned appeals to the Supreme Court of the United States from the Final Judgment of the Third Circuit Court of Honorable Judges Aldrest and Hunter Circuit Judges and Steel District Judges of November 14, 1978.

/s/ Walter Kuchta
WALTER KUCHTA
Box 101
Linden, New Jersey

December 11, 1978

COMPLAINT
(Filed February 14, 1980)

1. Plaintiffs reside in New Jersey and has a post office box number which is Box 101, Linden, N.J. 07036, in the northern district of New Jersey and is a citizen of the United States.

2. United States Government and Veterans Administration, Washington, D.C.

3. Defendant is a corporation of the State of Illinois with its principal office in Skokie, Illinois, and it is authorized to do business and is doing business in the State of New Jersey. (Allstate Insurance Company)

4. Defendant of firm of McDermott & McGee Esqs. who represented Allstate and is helping to steal money from the Plaintiffs and the firm of McDermott & McGee address is 64 Main Street, Millburn, N.J.

5. Defendant State of New Jersey is helping Allstate and the firm of McDermott & McGee Esqs. by accepting the wrong money and not the correct amount and that is fraud and the State is responsible for the correct amount and also the money of Lillain Kuchta and Daughter, the money for Walter Kuchta in the Trust Fund was put in illegal in court without Defendant and did not put the correct amount which they are going to steal and the amount of money they are keeping or stealing from Lillian Kuchta and Daughter which was never paid again they are out to steal this money which the State of New Jersey is helping them and is responsible no money was ever paid.

6. Defendants told the United States Government to drop their bill of about $10,000, but did not tell the truth and refused to give the correct amount of money to the family.

7. The alleged negligence by Defendants of not having the correct amount of money for the Kuchta Family and putting in incorrect amount in the State Fund. The alleged negligence of Defendants putting into State Courts without a Defendant which could not defend himself and for Lillian Kuchta who had cancer to get all money but they are out to steal the money instead of giving the money correct and right amount.

8. The State of New Jersey is responsible to see justice and correct amount of money but instead accepted the incorrect amount of money in the alleged negligence of the State of New Jersey.

9. The alleged negligence of Defendants not settling the matter for full interest and medical expences of the Kuchta Family. Allstate went against their agreement for medical that the court ordered and they refused to pay this also the lawyer and the State of New Jersey is responsible.

10. The alleged negligence of Defendants of not giving the correct amount to the Kuchta Family.

11. The alleged negligence of Defendants causing hardship for the family over the years and which may be years to come because of bad faith against the Kuchta Family.

12. Because of stealing and bad faith wherefore, all counts are to be incorporate as one count.

Wherefor Plaintiffs demands judgment against Defendants in the sum of $20,000,000 that is twenty million dollars plus interest and cost together with expense.

Request trial by jury.
Feb. 11, 1980

/s/ Walter Kuchta
Box 101
Linden, N.J. 07036

To the Defendants and Court I will be out of the Country for over a month because of medical and when I come back I will send interrogatories and admissions to Defendants, and I will ask the Post Office to hold the mail at Box 101, Linden, N.J. 07036. Request this complaint is not to be before the Honorable Judge Vincent P. Biunno.

/s/ Walter Kuchta
WALTER KUCHTA
Box 101
Linden, N.J. 07036

ORDER
(Filed June 30, 1980)

This matter coming on before the Court on motions for summary judgment of the State of New Jersey, John J. Hayden, Esq., Deputy Attorney General appearing and the defendants, Allstate Insurance Company and McDermott & McGee, John L. McDermott, Esq. appearing and Walter Kuchta appearing pro se in opposition and the Court having heard the arguments of those appearing on behalf of the respective parties and have read the papers submitted on these motions by the respective parties and for good cause shown;

It is on this 30th day of June, 1980, ORDERED that the Complaint filed against the defendants, State of New Jersey, Allstate Insurance Company and McDermott & McGee be dismissed for reasons stated at the hearing of June 23, 1980.

/s/ Vincent P. Biunno
VINCENT P. BIUNNO, J.U.S.D.C.

UNITED STATES DISTRICT COURT
District of New Jersey
Office of the Clerk
Trenton

December 24, 1975

Webb & McDermott, Esqs.
64 Main Street
Millburn, New Jersey 07041

Re: WALTER KUCHTA, et al., vs
ALLSTATE INSURANCE
COMPANY
Civil 1468-69

Gentlemen:

The mandate on the opinion of the United States Court of Appeals for the Third Circuit was filed on December 22, 1975 and entered on the docket on December 24, 1975.

It is requested that an order on the mandate be drafted and forwarded to this office for submission to the court.

The mandate ordered that the order of the District Court filed on November 14, 1974 in affirmed with appellant costs in favor of appellee, Allstate Insurance Company and against the appellants, Walter Kuchta and Infant Sandra Kuchta in the sum of $2,579.33.

Your order on the mandate should set forth the directions contained in the mandate.

Very truly yours,

Angelo W. Locascio, Clerk

By: /s/ Mickie D. Shanblin,
Deputy

CC: Walter Kuchta & Sandra Kuchta
P.O. Box 101
Linden, New Jersey

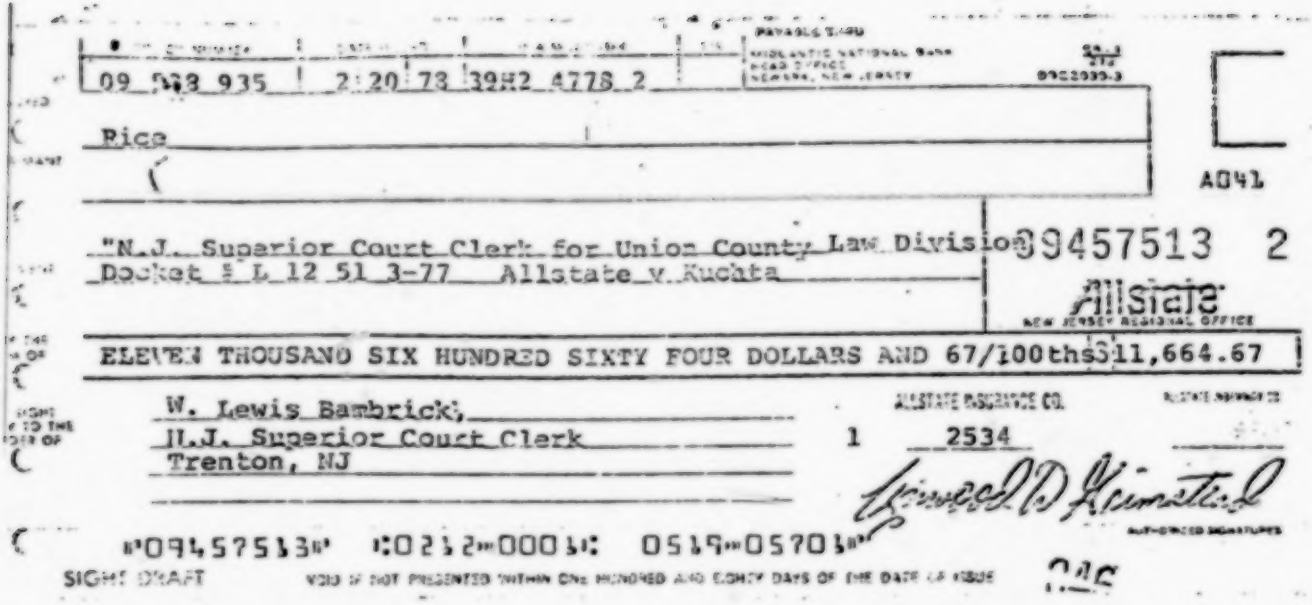
ORDER
(Filed March 2, 1978)

This matter having been opened to the Court by Order to Show Cause why the plaintiff, Allstate Insurance Company, should not be permitted to pay into Court $11,664.67 due and owing to the defendant, Walter Kuchta, from the settlement of his suits against James and Antoinette Rice and Myron J. Levy, Esq., said Order to Show Cause having been returnable on February 10, 1978, and the matter having been heard on the aforesaid date, McDermott & McGee, Esqs., by Michael F. O'Gara, Esq., appearing for the plaintiff, Allstate, and no one appearing for the defendant in opposition to this application and the Court having considered the Complaint and Affidavit submitted by the plaintiff in support of this application and the argument of counsel on its return date and the Court being of the opinion that good cause has been shown for the granting of this application, it is on this 22nd day of February , 1978;

O R D E R E D that the plaintiff, Allstate Insurance Company, be permitted to pay to the Clerk of the New Jersey Superior Court $11,664.67 due and owing to the defendant, Walter Kuchta from the settlement of his suits against James and Antoinette Rice and Myron J. Levy, Esq., and that said money shall be held by the Clerk pending an application to the Court by the defendant, Walter Kuchta, to obtain said money or until the Court shall otherwise order a disposition of this money so held by the Clerk.

/s/ James H. Coleman
JAMES H. COLEMAN, J.C.C.T./A.

CERTIFIED



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A041

"N.J. Superior Court Clerk for Union County Law Divisio 39457513 2
Docket # L 12 51 3-77 Allstate v. Kuchta

Allstate
NEW JERSEY REGIONAL OFFICE

ELEVEN THOUSAND SIX HUNDRED SIXTY FOUR DOLLARS AND 67/100ths $11,664.67

W. Lewis Bambrick,
N.J. Superior Court Clerk
Trenton, NJ

ALLSTATE INSURANCE CO.
1 2534

Edward D. Himstead
AUTHORIZED SIGNATURE

"094575138" :0212=00016: 0519=05701"

SIGHT DRAFT VOID IF NOT PRESENTED WITHIN ONE HUNDRED AND EIGHTY DAYS OF THE DATE OF ISSUE

24C

54a

SUPERIOR COURT OF NEW JERSEY

October 23, 1980

Walter Kuchta
P.O. Box 101
Linden, N.J. 07036

Re: Allstate Insurance vs Walter Kuchta
L-12513-77

Dear Sir:

We reply pursuant to your phone call of August 15, 1980 concerning the above matter.

Our records indicate the sum of $11,664.67 was deposited on March 6, 1978 by the plaintiff, Allstate Insurance Company pursuant to an Order signed on Feb. 22, 1978 by Judge James H. Coleman in this matter.

Our records indicate further that the sum of $321.78 was disbursed to Allstate Insurance Co. and McDermott and McGee, attorneys on March 12, 1979 pursuant to an Order signed by Judge Bryant W. Griffin on January 12, 1979.

Therefore there remains on deposit a balance of $11,342.89 plus accrued interest in this action.

Very truly yours,

Alvin J. Fortson,
Assistant Deputy Clerk

AJF:ilp